

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Stephen D. Cunnison, Chair
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DATE: August 18, 2003

SUBJECT: Probate Rule on Notice to Persons Represented by a Guardian or
Conservator (amend Cal. Rules of Court, rule 7.51(c)) (Action Required)

Issue Statement

Rule 7.51(c), adopted effective January 1, 2003, provides that where a person entitled to service of a notice of hearing has a guardian or conservator, copies of the notice must be served on the guardian or conservator *and*, unless the court dispenses with such service, on the ward or conservatee. Rule 7.51(c) must be amended to conform to Probate Code section 1210, which provides that in a decedent's estate proceeding, personal service of any process, notice, or order on a California-resident guardian or conservator of the estate of a person entitled to notice is equivalent to service on the ward or conservatee.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council amend rule 7.51(c) to conform to Probate Code section 1210, effective January 1, 2004.

The text of the amended rule is attached at page 4.

Rationale for Recommendation

Rule 7.51(c) now provides:

- (c) **[Notice to guardian or conservator]** When a guardian or conservator has been appointed for a person entitled to notice, the notice must be sent to the guardian or conservator and, unless the court has dispensed with such notice, to the ward or the conservatee.

This rule is inconsistent with Probate Code section 1210, which provides:

1210.

If an interested person has a *guardian or conservator of the estate who resides in this state, personal service on the guardian or conservator of any process, notice, or court order concerning a decedent's estate is equivalent to service on the ward or conservatee*, and it is the duty of the guardian or conservator to attend to the interests of the ward or conservatee in the matter. The guardian or conservator may appear for the ward or conservatee and waive any process, notice, or order to show cause that a person not under legal disability might waive. (Italics added.)

The phrase “personal service on the guardian or conservator [of the estate] . . . is equivalent to service on the ward or conservatee . . .” as used in section 1210 means that service of an additional copy of a notice of hearing on the ward or conservatee cannot be compelled by rule of court in the following circumstances:

1. Where the proceeding is a decedent’s estate proceeding;¹
2. Where the person entitled to service of the notice in the estate proceeding has a guardian or conservator *of his or her estate*;
3. Where the guardian or conservator of the estate of the person entitled to notice is a California resident; and,
4. Where the notice of hearing is *personally served* on the guardian or conservator of the estate of the person entitled to notice.²

The proposed amended rule is narrowly drawn to eliminate the requirement of service of a copy of a notice of hearing on a ward or conservatee entitled to notice only in the circumstances expressly covered in section 1210 and listed above. In all other situations—including where service of a notice of hearing on the guardian or conservator of the estate of the person entitled to notice is made by mail, where the guardian or conservator of the estate of the person entitled to notice is not a California resident, where the person entitled to notice has only a guardian or conservator of the person, or where the proceeding is not a decedent’s estate—rule 7.51(c) as it is currently drafted is correct. No amendment addressing these situations is proposed.

¹ Rule 7.51(c) applies to all probate proceedings where notices of hearing must be served, including guardianships and conservatorships, not just decedents’ estates.

² In most situations in a decedent’s estate proceeding, notices of hearing may be served personally *or by mail*, even on persons entitled to notice who have not previously been served or who have not made an appearance in the proceeding. See, e.g., Prob. Code, §§ 1215–1221, 8110.

Alternative Actions Considered

Rule 7.51(c) is inconsistent with Probate Code section 1210, and thus must be amended. No other action save outright repeal was considered. The advisory committee believes that repeal of rule 7.51(c) would not be appropriate because the rule applies to many more situations than does the statute, and because the general policy behind the rule—increasing actual notice—is sound.

Comments of Interested Persons

The proposed amendment was circulated to an expanded list of probate practitioners and probate law sections of local bar associations in addition to the AOC's standard mailing list of court executives, judges, and other interested persons and organizations, including the Trusts and Estates Section of the California State Bar.

Two comments were received concerning this amendment. Both were unqualified approvals, without specific comment.

The chart showing the comments received is attached at page 5.

Implementation Requirements and Costs

No increased costs in addition to the normal costs incurred in amending any rule of court are anticipated.

Attachment

Rule 7.51 of the California Rules of Court is amended, effective January 1, 2004, to read:

Rule 7.51. Service of notice of hearing

(a)–(b) ***

(c) [Notice to guardian or conservator]

(1) When a guardian or conservator has been appointed for a person entitled to notice, the notice must be sent to the guardian or conservator, ~~and,~~

(2) A copy of the notice must also be sent to the ward or conservatee unless:

(A) The court has dispensed dispenses with such notice; or, to the ward
or conservatee.

(B) Under Probate Code section 1210 in a decedent's estate proceeding,
the notice is personally served on a California-resident guardian or
conservator of the estate of the ward or conservatee.

(d)–(e) ***

SPR03-60

Rule on Notice to a Guardian or Conservator of a Person Entitled to Notice in a Probate Proceeding

	Commentator	Position	Comment on behalf of group?	Comment	Probate and Mental Health Advisory Committee Response
1.	Mr. Robert Gerard President Orange County Bar Association	A	Y	No specific comments were made.	No response is necessary.
2.	Ms. Emily Stuhlbarg Professional Conservator, President and CEO, Emily Stuhlbarg and Associates, Inc. County of Los Angeles	A	N	No specific comments were made.	No response is necessary.